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4 **IN THE UNITED STATES DISTRICT COURT**
5 **FOR THE DISTRICT OF ARIZONA**
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7 GEICO Indemnity Company, et al.,

8 Plaintiffs,

9 v.

10 M.M., et al.,

11 Defendants.
12

No. CV-23-00187-TUC-JCH

**ORDER AND
JUDGMENT FOR PLAINTIFFS**

13 Plaintiffs GEICO Indemnity Company and GEICO Casualty Company (collectively
14 "GEICO") have filed an Application for Default Judgment against Defendants M.M. and
15 R.S. Doc. 18. Defendants did not file a response to the Application for Default Judgment.
16 On GEICO's request, the Court set a hearing under Fed. R. Civ. P. 55(b)(2), (*see* Doc. 18
17 at 1; Doc. 23), on July 17, 2023. *GEICO Indemnity Company et al v. M.M. et al.*, 4:23-CV-
18 00187-TUC-JCH (D. Ariz. July 17, 2023). Defendant M.M., through counsel, appeared at
19 the hearing and indicated that he would not challenge the Application. *See id.* For the
20 reasons stated below, default judgment is appropriate.

21 **I. Background**

22 GEICO seeks a declaratory judgment that two insurance policies¹ it issued do not
23 provide a duty to defend or indemnify against claims and damages sought against
24 Defendant M.M. in an action currently pending in state court, Case No. C20224705 (Pima
25 Cnty. Super. Ct. Date). Complaint, Doc. 1 ("Compl."). The state court action asserts

26 ¹ Defendant-Insured M.M. has two relevant insurance policies with GEICO: (1) an Arizona Family
27 Automobile Insurance Policy, policy number xxxx-xx-65-80 (the "Auto Policy") issued by GEICO
28 Casualty Company; and (2) an Arizona Motorcycle Insurance Policy, policy number xxxx-xx-71-
61 (the "Motorcycle Policy") issued by GEICO Indemnity Company. Compl. ¶¶ 18–20.

1 negligence claims based on allegations that M.M. caused R.S. to contract a sexually
2 transmitted disease. Compl. ¶ 10. The negligence action further asserts that M.M. and R.S.
3 had consensual unprotected sexual intercourse in M.M.'s home and vehicle, among other
4 locations. Compl. ¶14. On March 20, 2023, M.M. submitted a claim to GEICO seeking
5 third-party bodily injury coverage for the injuries alleged by R.S. Compl. ¶ 31. GEICO
6 contends that R.S.'s alleged injuries do not arise from the "ownership, maintenance, or use
7 of a vehicle" under Arizona law and thus, coverage is precluded under the two insurance
8 policies. Compl. at ¶¶ 34–45.

9 GEICO filed their Complaint on April 20, 2023. *See* Compl. Plaintiffs effected
10 timely service on both Defendants. Docs. 12, 14. Neither M.M. nor R.S. answered or
11 otherwise defended against GEICO's claims. The Clerk of the Court entered default against
12 each Defendant on June 6, 2023. Docs. 16, 17.

13 **II. Jurisdiction**

14 Courts have an affirmative duty to determine their jurisdiction over the parties and
15 subject matter when a default judgment is sought against a non-appearing party. *In re Tuli*,
16 172 F.3d 707, 712 (9th Cir. 1999). Defendants M.M. and R.S. reside in, and are citizens
17 of, Arizona. Compl. ¶ 8. This action arises from an incident or incidents occurring in
18 Arizona and implicating an Arizona Family Automobile Insurance Policy and an Arizona
19 Motorcycle Insurance Policy. Compl. ¶¶ 19, 20. The record establishes that both
20 Defendants were served with the Complaint. Docs. 12, 14. The Court is satisfied that it has
21 personal jurisdiction over both Defendants.

22 As to subject matter, the parties are diverse as Plaintiffs are foreign insurance
23 companies organized and existing under the laws of Nebraska, with their principal place of
24 business in Maryland, (Compl. ¶ 4), and both Defendants are citizens of Arizona (Compl.
25 ¶ 8). The Court concludes the amount in controversy has been met. The insurance policies
26 at issue, covers a period spanning between September 16, 2021, and September 16, 2022,
27 have a combined \$200,000 limit for bodily injury. Doc. 1-2 at 38, 63. *See also* 28 U.S.C. §
28 1332(a)(1) ("The district courts shall have original jurisdiction of all civil actions where

the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between [] citizens of different States"). GEICO asserts, for purposes of diversity jurisdiction, that the amount in controversy exceeds \$75,000. Compl. ¶ 7 ("There is complete diversity of citizenship among the parties and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.") As such, the Court has subject matter jurisdiction over the instant action.

III. Default Judgment Standard

District courts have discretion to enter a default judgment under Rule 55(b). *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Relevant factors the Court must consider include: (1) the possible prejudice to plaintiff; (2) the merits of the claims; (3) the sufficiency of the complaint; (4) the amount in controversy; (5) the possibility of factual disputes; (6) whether default is due to excusable neglect; and (7) the policy favoring deciding cases on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). In evaluating the complaint's merits and sufficiency, the Court must accept as true the complaint's factual allegations, except those pertaining to damages. *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977).

IV. Analysis

A. The First, Fifth, Sixth, and Seventh *Eitel* Factors

The first, fifth, sixth, and seventh factors weigh in favor of default judgment cases where the defendants have not participated in the litigation. *Zekelman Indus. Inc. v. Marker*, No. CV-19-02109-PHX-DWL, 2020 WL 1495210, at *3–4 (D. Ariz. Mar. 27, 2020) ("In cases like this one, in which Defendants have not participated in the litigation at all, the first, fifth, sixth, and seventh factors are easily addressed."). Here, the first, fifth, sixth, and seventh factors support default judgment.

The first factor, which considers the possibility of prejudice to the plaintiff, weighs in GEICO's favor because it has no recourse absent a default judgment. *See PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002).

The fifth factor considers the possibility of factual disputes. GEICO's Complaint

1 seeks a declaratory resolution of a legal question that does not depend on resolving disputed
2 facts. *See* Doc. 18 at 7. This factor also weighs in GEICO's favor.

3 The sixth factor considers whether default was due to excusable neglect. GEICO
4 properly served both Defendants in this action. Docs. 12, 14. Thus, Defendants' failure to
5 answer and the resulting default likely did not result from excusable neglect. As such, this
6 factor supports default judgment.

7 Lastly, the seventh factor—which considers the policy favoring decisions on the
8 merits—would typically weigh against an entry of default judgment. *Eitel*, 782 F.2d at
9 1472. The mere existence of Rule 55(b), however, "indicates that this preference, standing
10 alone, is not dispositive." *PepsiCo*, 238 F. Supp. 2d at 1177. Because the Court is
11 compelled to accept the truth of GEICO's factual allegations, and five other *Eitel* factors
12 favor default judgment, this final factor is neutral.

13 **B. Second and Third *Eitel* Factors**

14 The second and third *Eitel* factors consider the claim's merits and the Complaint's
15 sufficiency. *Eitel*, 782 F.2d at 1471. Courts frequently consider these to be the two most
16 important factors. *Zekelman Indus. Inc.*, 2020 WL 1495210, at *5. The second and third
17 factors are generally thought to require the plaintiff to state a claim. *PepsiCo*, 238 F. Supp.
18 2d at 1175.

19 GEICO seeks relief under the Declaratory Judgment Act, 28 U.S.C. § 2201. Compl.
20 ¶¶ 1–2. The Act provides that in a case of actual controversy within its jurisdiction, a
21 federal court "may declare the rights and other legal relations of any interested party
22 seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C.
23 § 2201(a).

24 The merits of GEICO's Complaint are clear and not reasonably subject to dispute.
25 Here, the Auto Policy covers bodily injuries arising "out of the ownership, maintenance or
26 use of the owned auto or a non-owned auto." Compl. ¶ 35. Similarly, the Motorcycle Policy
27 covers bodily injuries "arising out of the ownership, maintenance or use of an owned
28 vehicle or a non-owned vehicle." Compl. ¶ 36.

1 Arizona law construes the phrase "arising out of the ownership, maintenance or use"
2 of a motor vehicle to require "a causal relationship between the injury and ownership,
3 maintenance or use of the car." *Love v. Farmers Ins. Group*, 121 Ariz. 71, 74 (App. 1978).
4 Generally, coverage exists only when the vehicle's use is related to its intrinsic nature "as
5 a means of transport." *Benevides v. Ariz. Prop. & Cas. Ins. Guar. Fund*, 184 Ariz. 610, 613
6 (App. 1995). The requisite connection can also exist in cases that involve injury caused by
7 other uses of a vehicle, such as to carry cargo, that do not directly involve driving. *See*
8 *Morari v. Atl. Mut. Fire Ins. Co.*, 105 Ariz. 537, 540, 468 P.2d 564, 567 (1970) (gunshot
9 wound caused by negligent removal of loaded gun from truck's cargo); *Farmers Ins. Co.*
10 *of Ariz. v. Till*, 170 Ariz. 429, 432, 825 P.2d 954, 957 (App. 1991) (failure to secure window
11 separating truck from camper resulted in dog attacking passenger). Conversely, an injury
12 does not necessarily arise out of the use of a vehicle simply because it occurs inside the
13 vehicle or at the hands of someone using a vehicle. *See Ruiz v. Farmers Ins. Co. of Ariz.*,
14 177 Ariz. 101, 103–04 (1993) (holding that injuries sustained in a car-to-car shooting did
15 not arise out of the use of a vehicle where passenger needed to show that the uninsured
16 vehicle caused and produced her injury, not that it merely facilitated her injury).

17 Here, R.S.'s injuries did not arise out of the operation or use of the motor vehicle or
18 motorcycle. That a vehicle was the location of some of the alleged sexual conduct
19 underlying the alleged injuries does not render it the cause of her injuries. *See Benevides*,
20 184 Ariz. at 618 ("No causal link exists when the car is merely the situs of the accident.").
21 *See also Rule v. Allstate Fire & Cas. Ins. Co.*, No. 2 CA-CV 2016-0161, 2017 WL
22 3529108, at *2 (Ariz. Ct. App. Aug. 17, 2017) (collecting Arizona cases demonstrating
23 that an injury does not necessarily arise out of the use of a vehicle simply because it occurs
24 inside the vehicle or at the hands of someone using a vehicle). Thus, the second and third
25 factors favor default judgment.

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1 **C. Fourth *Eitel* Factor**

2 The amount in controversy factor weighs neutral. Where the underlying claim is for
3 declaratory relief, some courts have found that this factor weighs favorably for granting
4 default judgment. *See PepsiCo*, 238 F. Supp. 2d at 1177. If the declaratory relief sought
5 implicates the parties and merits of a separate action, however, courts have considered the
6 amount at stake in that separate action while weighing the *Eitel* factors. *See Helwan Cement*
7 *S.A.E. v. Tahaya Misr Inv., Inc.*, No. 2:17-cv-00543-CAS (AFMx), 2017 WL 2468775, at
8 *5 (C.D. Cal. June 5, 2017) (concluding that this factor weighs against default judgment
9 where an insurance company sought a declaration that it had no duty to defend separate
10 actions for, cumulatively, \$925 million).

11 Here, GEICO alleges, for purposes of diversity jurisdiction, that the amount in
12 controversy exceeds \$75,000. *See* Compl. ¶ 7. GEICO has not, however, provided specific
13 information from which the Court can discern the amount of money at stake in the state
14 court action. *See* Compl. ¶ 17 ("R.S. asserts that her alleged damages qualify the State
15 Court Case for 'Tier 3' under A.R.C.P. Rule 26.2(c)(3), meaning she seeks \$300,000 or
16 more in damages."). The Court concludes that the fourth *Eitel* factor is neutral.

17 **D. Conclusion**

18 Five *Eitel* factors support entering default judgment and two are neutral. The Court
19 grants GEICO's application and enters default judgment.

20 **V. Proceeding Anonymously**

21 The Court considers whether to permit Defendants to proceed anonymously. The
22 presumption in litigation, which is related to the public's right to open courts and the right
23 of private individuals to confront their accusers, is that parties must use their real names.
24 *Doe v. Kamehameha Sch./Bernice Pauahi Bishop Est.*, 596 F.3d 1036, 1042 (9th Cir. 2010)
25 (citations omitted). The court may permit a party to proceed anonymously, however, when
26 special circumstances justify secrecy, such as, "to protect a person from harassment, injury,
27 ridicule or personal embarrassment." *Does I thru XXIII v. Advanced Textile Corp.*, 214
28 F.3d 1058, 1067–68 (9th Cir. 2000). *Advanced Textile* offers three situations where a

1 fictitious name is appropriate: (1) when the party's identification creates a risk of retaliatory
2 physical or mental harm; (2) when a pseudonym is necessary to preserve privacy in a highly
3 sensitive matter; and (3) when a party may, during litigation, be compelled to admit intent
4 to engage in illegal activity. *Id.* at 1068. To proceed under a pseudonym, the party's need
5 for anonymity must outweigh prejudice to the opposing party as well as the public's interest
6 in knowing the party's identity. *Id.* at 1067.

7 This case involves a highly sensitive matter under the second scenario described in
8 *Advanced Textile*, specifically, an alleged STD transmission between two consenting adults
9 who had unprotected sex. *See Doe v. Mozer*, No. 216CV00210KJDVCF, 2016 WL
10 3536857, at *1 (D. Nev. June 27, 2016) (finding use of a fictitious name warranted where
11 plaintiff's sexual health and details of his transmission of a sexually transmitted disease
12 constituted a highly sensitive matter). Moreover, there is no prejudice to GEICO. The Court
13 has previously granted GEICO's *ex parte* requests to file a copy of the Complaint, and
14 certain Exhibits, under seal with GEICO citing the personal and sensitive nature of the
15 allegations. *See* Docs. 4, 19. GEICO has also lodged a proposed deanonymized default
16 judgment. *See* Doc. 22. Although GEICO knows the Defendants' names it has continued
17 to request leave to file documents using acronyms.

18 Lastly, any prejudice against the public's interest in knowing the Defendants' true
19 names is also insignificant where the public is privy to the Court's legal conclusions. *See*
20 *Advanced Textile Corp.*, 214 F.3d 1068, *citing Doe v. Stegall*, 653 F.2d 180, 185 (5th Cir.
21 1981) (explaining party anonymity does not obstruct the public's view of the issues or the
22 Court's performance in resolving them). As such, the Court will continue to use Defendants'
23 acronyms.

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1 **VI. Order**

2 **IT IS ORDERED GRANTING** Plaintiffs' Application for Default Judgment
3 Against Defendants M.M. and R.S. (Doc. 18). Default judgment is entered in favor of
4 Plaintiffs and against Defendant Defendants M.M. and R.S. (collectively, "Defendants").
5 The Court hereby enters the following declaratory judgment in favor of GEICO and against
6 Defendants:

- 7 1. GEICO has no duty to defend or indemnify M.M. with respect to the claims
8 asserted against M.M. by R.S. in the Superior Court of the State of Arizona in
9 and for the County of Pima, Case No. C20224705.²

10 **IT IS FURTHER ORDERED DIRECTING** the Clerk of the Court to terminate
11 this action.

12 Dated this 18th day of July, 2023.

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16 Honorable John C. Hinderaker
17 United States District Judge
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² Concurrent with this Order, the Court will file under seal a deanonymized judgment.